

OMB WATCH

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EX PARTE OR LATE FILED

August 31, 1998

Magalie Roman-Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

ORIGINAL


Re: *Ex Parte* Comments in MM Docket No. 98-43

Dear Ms. Salas,

Attached is copy of a letter provided to Chairman Kennard for inclusion on the record in the above-referenced docket. This letter dated August 31, 1998 discusses OMB Watch's position on electronic access to broadcaster filings.

Thank you.

Sincerely,


Patrice McDermott
Information Policy Analyst

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EXCLUDE

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August 31, 1998

William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in MM Docket No. 98-43

Dear Mr. Kennard,

I am writing on behalf of OMB Watch to convey our *ex parte* remarks in reference to the Mass Media Docket No. 98-43. OMB Watch strongly supports the Commission's attempts to facilitate the process for broadcasters to electronically file applications and supplementary materials, and its consideration to make those materials electronically available to the public. This undertaking would ensure that more of the public will have better access to this documentation. Some of the commentators' recommendations would limit the benefits to broadcasters and applicants, however, and our remarks will primarily focus on these suggestions.

The Paperwork Reduction Act mandates that each Federal agency "(1) ensure that the public has timely and equitable access to the agency's public information...." [Paperwork Reduction Act of 1995, P.L. 104-13, sec. 3506(d)]. Electronic filing is not simply a means for expediting applications. It is a means through which public information is made available more quickly to the public.

SECURITY AND INTEGRITY OF INFORMATION

The National Association of Broadcasters (NAB) asserts that broadcasters need to be assured that a system is in place that will deliver their applications and filings quickly, without alteration to or tampering with information. Without such a guarantee, NAB maintains that broadcasters will not be able to trust the Commission's ability to safeguard their applications. Claims of security risks on the part of broadcasters are unwarranted, however, and should not outweigh public access to public documents.

Any security concerns are easily addressed by the existence and successful application of technology currently employed by the Commission itself to provide official documents via electronic means. If the Commission can make its official documents available to the public electronically without worry of tampering, it can protect the electronic submissions of broadcasters.

We share the Media Access Project's sentiments that the "integrity of broadcaster filings must be secure in order to protect the public's reliance on those filings." [Media Access Project, reply comments, page 2] Electronic application filings are just as susceptible to accidental or intentional tampering by broadcasters before they even reach the FCC. While the Paperwork Reduction Act does state that agencies should "(B) in cases in which the agency provides public information maintained in electronic format, provid[e] timely and equitable access to the underlying data...." [Paperwork Reduction Act of 1995, P.L. 104-13, sec. 3506(d)(1)], it cannot be assumed that the Commission will make electronically submitted filings available to the public as soon as they are filed by broadcasters. As MAP notes, this necessary space in time would address NAB's security concerns by allowing the Commission to add any necessary security features to filings that would verify their authenticity, and prevent their vulnerability to tampering.

We agree with the Federal Communications Bar Association (FCBA) that the Commission should not take action on an application where it is alleged that necessary supplemental material is not available in a licensee's local public file [FCBA comments, page 15 at 29]. We cannot support, however, the requirement that the same information also be made available through an independent contractor, in order for action to be taken on an application.

ACCESS AND COST

NAB's request to monitor the identity of individuals accessing public information — to ensure the security and integrity of information accessible through electronic means — is most troubling. [NAB comments, p.10] Broadcasters indeed need to have confidence in the system used to process and catalogue their application information. Their needs, however, should not outweigh the public's privacy rights. We share the Media Access Project's opinion that electronic documents, unlike physical files, do not require the monitoring of individuals to ensure the integrity and safety of the information contained therein.

The Commission has an obligation to protect the privacy of users of public information. The public needs to know that their trust in the Commission to protect its privacy rights is well-placed.

Additionally, the public, because it plays a vital watchdog role, should have access to the same information Commission staff may reference. We would note that it is the Commission's responsibility to review applications for missing information and to follow-up any irregularities in the information submitted by broadcasters. In those cases where the Commission is unable to do so, individuals and groups with access to that information are in a better position to spot irregularities or missing information, thereby enhancing the quality of the information and the effectiveness of the Commission's operations. The public cannot monitor station transactions, however, unless it has access to the information involved in those transactions, including broadcaster applications, such as sales contracts, corporation bylaws, stock pledge agreements, etc.

Rather than controlling the range of access points, the Commission should make every effort to expand the number of access points for broadcaster applications. Having documents available in a station's public file is not sufficient for unqualified public access. Moreover, access to a public file in a station is constrained by the willingness of a broadcaster to make those files accessible without intimidation or compromising the rights of individuals. We do not believe that broadcasters should be allowed to decide the appropriate audience for documents. This runs counter to the notion of public access.

FCBA suggests using an independent contractor to handle the collection, warehousing and dissemination of electronic filings. We strongly oppose this proposal. This privatizing scheme would remove from the Commission the responsibility and duty to oversee these functions, and would also have the effect of removing the public accountability of those who control the access to and integrity of the information. This also violates the Paperwork Reduction Act which states that agencies can "(4) not, except where specifically authorized by statute-- (A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;" Paperwork Reduction Act of 1995, P.L. 104-13, sec. 3506(d)(4)

FCBA's suggestion for privatizing access to public documents adds yet another set of obstacles between public records and the public, because it assigns a price tag to public participation. We, again, point to the Paperwork

OMB Watch *Ex Parte* Presentation
August 31, 1998
Page 3 of 3

Reduction Act's mandate that an agency shall not "(C) charge fees or royalties for resale or redissemination of public information; or (D) establish user fees for public information that exceed the cost of dissemination." [Paperwork Reduction Act of 1995, P.L. 104-13, sec. 3506(d)(4)]. We, therefore, do not support any alternative arrangement, whether it is private reading rooms or dual-pricing plans, which makes access to broadcaster information either cost prohibitive or more difficult for the public.

We would suggest that language be added stating that no action will be taken on any application that is not available in a station's local public file, and through the Commission's Washington, DC reference room, *and* electronically at least five days after electronic filing of an application.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrice McDermott", with a stylized flourish at the end.

Patrice McDermott
Information Policy Analyst

cc: Susan Ness
Harold Furchtgott-Roth
Michael K. Powell
Gloria Tristani
Buck Logan, Chief, Mass Media Bureau, Policy & Rules Division